

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BUCKS COUNTY EMPLOYEES)	No. 2:23-cv-00982-MHW-KAJ
RETIREMENT SYSTEM, Individually and on)	
Behalf of All Others Similarly Situated,)	<u>CLASS ACTION</u>
)	
Plaintiff,)	Judge Michael H. Watson
)	Magistrate Judge Kimberly A. Jolson
vs.)	
)	
NORFOLK SOUTHERN CORPORATION, et)	
al.,)	
Defendants.)	
)	

PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S RESPONSE TO SHOW CAUSE
ORDER AS TO WHY VENUE IS PROPER IN THE EASTERN DIVISION

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[Additional counsel appear on signature page.]

On June 7, 2023, Norfolk Southern Corporation (“Norfolk Southern” or the “Company”), Alan H. Shaw, James A. Squires, and Mark R. George (collectively, “Defendants”) submitted Defendants’ Response to Plaintiff’s Response to Show Cause Order as to Why Venue Is Proper in the Eastern Division (ECF 36) (“Defendants’ Response”). Plaintiff Bucks County Employees Retirement System (“Plaintiff”) respectfully submits this Reply to Defendants’ Response.

Defendants accuse Plaintiff of ignoring salient local rules and engaging in “irrelevant” arguments under 28 U.S.C. §1404(a). Defendants’ Response, ECF 36 at PageID 317. Because these arguments misread both the Court’s Show Cause Order (ECF 27) (“Order”) and the Local Civil Rules for the United States District Court for the Southern District of Ohio (“Local Rules”), they merit no consideration.

Defendants contend that “Plaintiff’s Response to the Order does not even mention the applicable local rule,” citing Local Rule 82.1(d). Defendants’ Response, ECF 36 at PageID 315-16. Yet, there is good reason for skepticism as to that rule’s applicability here. For starters, citation to Local Rule 82.1(d) is conspicuously absent from the Order. Order, ECF 27 at PageID 232-33. More fundamentally, Defendants have identified the *wrong* governing rule in the context of this litigation, since Local Rule 82.1(d) governs venue in cases involving corporate defendants who are “deemed to reside in this District.” S.D. Ohio Civ. R. 82.1(d). The proper rule governing the venue in this case is Local Rule 82.1(e), which applies to cases where, as here, “no defendant is a resident of this District,” and provides that venue lies where “a substantial part of the events or omissions giving rise to the claim occurred.” S.D. Ohio Civ. R. 82.1(e). That requirement is satisfied by Defendants’ lobbying activities in the Eastern Division of this District.¹ *See* Plaintiff’s Response to Show Cause Order (“Plaintiff’s Response”), ECF 30 at PageID 244-46.

¹ In addition to the fact that Norfolk Southern engaged in lobbying in this District, venue is independently proper here under the terms of the Exchange Act. *See SEC v. Elecs. Warehouse, Inc.*, 689 F. Supp. 53, 74 (D. Conn. 1988) (Exchange Act’s venue provision “represents an affirmative

Defendants next argue that Plaintiff makes “irrelevant” arguments under 28 U.S.C. §1404(a). Defendants’ Response, ECF 36 at PageID 317. However, unlike Local Rule 82.1, which made no appearance in the Order, the Court *specifically cited* to §1404(a), recounting that “[f]or the convenience of parties and witnesses, and in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” Order, ECF 27 at PageID 232 (citing 28 U.S.C. §1404(a)). This is a strong indication, in Plaintiff’s opinion, that the Court does not find §1404(a) to be irrelevant with respect to the determination of the proper venue of this case, and therefore Plaintiff responded to the Court’s Order with argument according to the Sixth Circuit’s interpretation of that statute.

Because Defendants failed to heed either the Order or the Local Rules, their groundless arguments do nothing to disrupt the good cause shown by Plaintiff that venue is more convenient in the Eastern Division of this District. *See generally* Plaintiff’s Response, ECF 30. Thus, Plaintiff respectfully requests this Court retain venue.

DATED: June 12, 2023

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congressional policy choice to allow plaintiffs in securities cases the widest possible choice of forums in which to sue”), *aff’d sub nom. SEC v. Calvo*, 891 F.2d 457 (2d Cir. 1989), *cert. denied*, 496 U.S. 942 (1990).

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on June 12, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

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Mailing Information for a Case 2:23-cv-00982-MHW-KAJ Bucks County Employees Retirement System v. Norfolk Southern Corporation et al

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